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IN THE
COURT OF APPEALS OF INDIANA

ROBERT CORNELIUS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0612-CR-1081
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia Gifford, Judge
Cause No. 49G04-0607-FA-121398

June 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Robert Cornelius appeals his conviction for Attempted Murder,[1] a class A felony, and the finding that he is a Habitual Offender.[2] Cornelius argues that the trial court erroneously refused to give a jury instruction relating to self-defense. Finding no error, we affirm the judgment of the trial court.

FACTS

On July 3, 2006, Jajuan Clayton and Anthony Bryant went to Bryant's father's house in Indianapolis. Cornelius, a neighbor, was inside the home with a woman who Clayton knew. Cornelius called the woman a "bitch" and Clayton asked him to stop referring to her in that way. Tr. p. 50. After Bryant's father returned, Cornelius, who was upset, was asked to leave.

Clayton and Bryant then left the home and went to buy some food. While walking back to the house, they took a shortcut through the backyard of the residence of Cornelius and his mother. Clayton routinely cut through that yard. As they walked through the yard, Cornelius, who had been standing on the porch, approached them. Cornelius asked Clayton if everything was fine between them and extended his hand. Clayton ignored Cornelius and told Bryant to walk behind him and follow him off of the property. Cornelius, who was wielding two knives, then stabbed Clayton in the chest. Neither Clayton nor Bryant had any weapons, and neither man threatened Cornelius. After Clayton was stabbed, he and Bryant ran away and Cornelius chased them, holding the two knives and screaming, "I kill all y'all."

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[1] Ind. Code § 35-41-5-1; Ind. Code § 35-42-1-1.

[2] Ind. Code § 35-50-2-8.

Id. at 56. Clayton and Bryant ran back to the home of Bryant's father, who defused the situation and convinced Cornelius to leave. Bryant called the police and an ambulance took Clayton to Wishard Hospital, where he was treated for a half-centimeter hole in his heart.

On July 7, 2006, the State charged Cornelius with class A felony attempted murder and class B felony aggravated battery, and on September 7, 2006, the State charged Cornelius with being a habitual offender. At Cornelius's jury trial, which began on October 16, 2006, Cornelius did not tender a proposed jury instruction on self-defense. The trial court drafted its own instruction on self-defense but refused to give it to the jury because there was no evidence that Cornelius had been placed in fear. Following the trial, the jury found Cornelius guilty of class A felony attempted murder and class B felony aggravated battery, and Cornelius admitted to being a habitual offender.

On November 1, 2006, following a hearing, the trial court found that the aggravated battery conviction merged into the attempted murder conviction and did not enter judgment thereon. The trial court imposed a sentence of forty years for the attempted murder conviction and enhanced that sentence by thirty years for the habitual offender finding, for a total sentence of seventy years imprisonment. Cornelius now appeals.

DISCUSSION AND DECISION

Cornelius's sole argument on appeal is that the trial court erred by refusing to give a jury instruction on self-defense. To determine whether a trial court erroneously refused to give a jury instruction, we consider whether the tendered instruction correctly states the law, whether the evidence supports giving the instruction, and whether other instructions already

given cover the substance of the tendered instruction. Driver v. State, 760 N.E.2d 611, 612 (Ind. 2002). Instructing the jury is generally within the trial court's sole discretion and we will reverse only upon concluding that there was an abuse of that discretion. Id.

A valid claim of self-defense provides a legal justification for a person to use force against another to protect himself from what he reasonably believes to be the imminent use of unlawful force. I.C. § 35-41-3-2(a). He is justified in using deadly force only if he "reasonably believes that that force is necessary to prevent serious bodily injury to himself or a third person." Edgecomb v. State, 673 N.E.2d 1185, 1196 (Ind. 1996).

Initially, we observe that Cornelius has waived this argument, inasmuch as he failed to tender a proffered self-defense instruction at trial and has failed to include the trial court's own self-defense instruction in the record on appeal. See Nolan v. State, 863 N.E.2d 398, 404 (Ind. Ct. App. 2007) (holding that if the trial court fails to instruct the jury on a pertinent point then it is the obligation of the party desiring to have that point covered in the instructions to tender his instruction on the same), trans. denied.

Wavier notwithstanding, the State presented evidence at trial that Clayton and Bryant were walking through Cornelius's yard—a path commonly taken by Bryant—when Cornelius approached them. Clayton and Bryant were unarmed; Cornelius wielded two knives. Cornelius asked Clayton if things between them were fine. Clayton ignored Cornelius and told Bryant to walk behind him so that they could leave the property. At that point, Cornelius stabbed Clayton in the chest with one of the knives. Thus, Cornelius attacked two unarmed men who were attempting to leave the property and extricate

themselves from the situation. Under these circumstances, it is readily apparent that Cornelius could not have reasonably believed that he was in imminent danger of serious bodily injury; thus, the evidence does not support an instruction on self-defense. Consequently, the trial court did not abuse its discretion in refusing to give such an instruction.

The judgment of the trial court is affirmed.

FRIEDLANLDER, J., and CRONE, J., concur.